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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

COSMO FRASER, et al.,  
Plaintiffs,  
v.  
BRIGHTSTAR FRANCHISING LLC, et al.,  
Defendants.

Case No. [16-cv-01966-JSC](#)

**ORDER RE: DEFENDANTS’ MOTIONS  
TO DISMISS AND TO TRANSFER  
VENUE**

Re: Dkt. Nos. 15, 16, 17

Plaintiffs-franchisees Cosmo Fraser and Adam Fraser (“Plaintiffs”) filed suit against Defendant-franchisor BrightStar Franchising, LLC (“BrightStar”) and its individual employees Defendants Shelly Sun (“Sun”), Scott Oaks (“Oaks”), Sean Fitzgerald (“Fitzgerald”), and Thomas Gilday (“Gilday,” and collectively, “Individual Defendants”), alleging violation of the California Franchise Investment Law, fraudulent inducement, conspiracy to commit fraud, unfair business practices, and negligent misrepresentation. Plaintiffs’ claims arise out of the negotiations and execution of a Franchise Agreement between Plaintiffs and BrightStar. Now pending before the Court are (1) Individual Defendants’ motion to dismiss Plaintiffs’ First Amended Complaint (“FAC”) under Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction; (2) BrightStar and Individual Defendants’ motion to dismiss under Federal Rule of Civil Procedure 12(b)(3) for improper venue, or in the alternative, to transfer the case under 28 U.S.C. § 1404(a); and (3) Individual Defendants’ motion to dismiss under Federal Rule of Civil Procedure 12(b)(5) for insufficient service of process. (Dkt. Nos. 15-17.<sup>1</sup>)

After carefully considering the arguments and briefing submitted, and having had the

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<sup>1</sup> Record citations are to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of the documents.

1 benefit of oral argument on August 4, 2016, the Court GRANTS Defendants’ motion to transfer  
2 venue and TRANSFERS this case to the Northern District of Illinois. Further, the Court DENIES  
3 Defendants’ Rule 12(b)(3) motion to dismiss and, in light of the transfer, DENIES WITHOUT  
4 PREJUDICE Individual Defendants’ motions to dismiss for lack of personal jurisdiction and for  
5 insufficient service of process.<sup>2</sup>

## 6 BACKGROUND

### 7 I. Factual Background

8 Plaintiffs are joint owners of a BrightStar franchise operating in Buckhead, Georgia; Adam  
9 Fraser is a resident of Georgia, and Cosmo Fraser is a resident of California. (FAC ¶¶ 3-4, 10  
10 (Dkt. No. 14).) BrightStar, an Illinois limited liability company, is a franchisor of home  
11 healthcare services throughout the United States. (*Id.* ¶¶ 5, 10.) Individual Defendants are current  
12 and former officers and directors of BrightStar who negotiated with Plaintiffs to enter into a  
13 Franchise Agreement to operate the Buckhead franchise. (*Id.* ¶¶ 6-9, 23.) Defendants’  
14 negotiations with Plaintiffs, primarily Cosmo Fraser, occurred via email, telephone, and video  
15 conference. (*Id.* ¶ 23; Dkt. No. 20-1 ¶ 4; Dkt. No. 15-1 ¶¶ 4-5; Dkt. No. 15-2 ¶¶ 4-5; Dkt. No. 15-  
16 4 ¶¶ 4-5; Dkt. No. 15-5 ¶¶ 4-5.)

17 Plaintiffs initially wanted to purchase a BrightStar franchise in the “Morrison territory” in  
18 Northeast Atlanta, Georgia, but BrightStar refused to sell that territory. (*Id.* ¶ 24.) Instead,  
19 BrightStar and Individual Defendants made a series of material misrepresentations and omissions  
20 in an effort to induce Plaintiffs to purchase a BrightStar franchise in the Buckhead territory,  
21 including that Buckhead was a “great opportunity to open a new territory” in a “profitable  
22 location,” and Plaintiffs “were getting a ‘new’ market.” (*Id.* ¶¶ 24, 37, 47.) Additionally,  
23 following a trip by Plaintiffs to Illinois, Oaks provided Plaintiffs a copy of BrightStar’s Financial  
24 Disclosure Document that included misleading financial projections and omitted material facts  
25 regarding the Buckhead territory. (*Id.* ¶ 45.) Based on these and other misrepresentations,  
26 Plaintiffs entered into the Franchise Agreement with BrightStar on or around February 19, 2013.

27  
28 <sup>2</sup> All parties have consented to the jurisdiction of the undersigned magistrate judge pursuant to 28  
U.S.C. § 636(c). (Dkt. Nos. 8, 9.)

1 (*Id.* ¶¶ 29, 39, 47; Dkt. No. 20-1 at 12.) The executed Franchise Agreement included an Illinois  
2 choice-of-law provision, as well as a venue provision stating that “[t]he parties expressly agree to  
3 the jurisdiction and venue of any court of general jurisdiction in [Illinois]” and “Franchisee [i.e.,  
4 Plaintiffs,] acknowledges that this Agreement has been entered into in the State of Illinois” and  
5 “Franchisee hereby irrevocably consents to the personal jurisdiction of the state and federal courts  
6 of [Illinois].” (Dkt. No. 20-1 at 62-63.)

7 In September 2015, Plaintiffs learned that BrightStar’s Franchise Disclosure Document did  
8 not disclose that two BrightStar franchises had previously operated and failed in the Buckhead  
9 territory. (*Id.* ¶¶ 26-27, 36, 48.) Plaintiffs were informed of this information by the prior  
10 Buckhead franchisee, who “turned back the franchise” to Brightstar because of Buckhead’s “poor  
11 demographics” and lack of profitability. (*Id.*) Plaintiffs also discovered that BrightStar and  
12 Individual Defendants misrepresented the geographic area and potential client population of the  
13 Buckhead territory and provided misleading financial information in the Franchise Disclosure  
14 Document. (*Id.* ¶¶ 26-27, 36.)

15 **II. Procedural History**

16 Plaintiffs initiated this action on March 11, 2016, in Marin County Superior Court, and  
17 BrightStar and Individual Defendants removed the case to federal court based on diversity of  
18 citizenship pursuant to 28 U.S.C. § 1441(b). (Dkt. No. 1 at 3.) Plaintiffs subsequently filed their  
19 FAC on May 13, 2016, alleging the same five causes of action against BrightStar and Individual  
20 Defendants: (1) unlawful offer and sale of franchises by means of untrue statements or omissions  
21 of material fact (Cal. Corp. Code §§ 31201, 31301, 31302); (2) fraudulent inducement; (3)  
22 conspiracy to commit fraud; (4) unfair and unlawful business practices; and (5) negligent  
23 misrepresentation. (*See* FAC.) Plaintiffs seek rescission of the Franchise Agreement, declaratory  
24 relief, damages and costs. To date, Plaintiffs have served BrightStar, Sun, and Gilday, but not  
25 Oaks and Fitzgerald. (Dkt. Nos. 1-2, 29, 30.) Now before the Court are a motion by all  
26 Defendants to dismiss pursuant to Rule 12(b)(3) or, in the alternative, to transfer venue pursuant to  
27 28 U.S.C. § 1404(a) (Dkt. No. 16) and Individual Defendants’ motions to dismiss for lack of  
28 personal jurisdiction pursuant to Rule 12(b)(2) and 12(b)(5) (Dkt. Nos. 15, 17).

1 **DISCUSSION**

2 **I. Diversity Jurisdiction**

3 “In this circuit a court must determine whether or not it has subject-matter jurisdiction  
4 before considering whether the venue is proper.” *Parke v. Cardsystems Sols., Inc.*, No. C 06-  
5 04857 WHA, 2006 WL 2917604, at \*2 (N.D. Cal. Oct. 11, 2006) (citations omitted); *see also*  
6 *Bookout v. Beck*, 354 F.2d 823, 825 (9th Cir. 1965). The federal diversity jurisdiction statute  
7 provides that the “district courts . . . have original jurisdiction of all civil actions where the matter  
8 in controversy exceeds the sum or value of \$75,000” and where all parties to the action are  
9 “citizens of different states.” 28 U.S.C. § 1332(a). For purposes of diversity, “an LLC is a citizen  
10 of every state of which its owners/members are citizens.” *Johnson v. Columbia Properties*  
11 *Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). In removal actions, as here, courts are to  
12 “[s]trictly construe the removal statute against removal jurisdiction” such that “[f]ederal  
13 jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.”  
14 *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

15 Both requirements of diversity jurisdiction are met here. First, Plaintiffs are seeking  
16 monetary damages and restitution in excess of \$75,000 (FAC ¶ 1); the amount-in-controversy  
17 requirement is therefore satisfied. Second, Plaintiffs are residents of California and Georgia (*id.*  
18 ¶¶ 3-4), while BrightStar is an Illinois limited liability company whose sole member is Brightstar  
19 Group Holdings, Inc., a Delaware corporation with its principal place of business in Illinois (Dkt.  
20 No. 1 ¶ 22; Dkt. No. 16-4 ¶ 5), Sun is a resident and citizen of Illinois (Dkt. No. 16-2 ¶ 4),  
21 Fitzgerald is a resident and citizen of Ohio (Dkt. No. 16-3 ¶ 4), Gilday is a resident of Illinois and  
22 a citizen of Connecticut (Dkt. No. 16-4 ¶ 17), and Oaks is a resident and citizen of Ohio (Dkt. No.  
23 16-5 ¶ 4). There is thus complete diversity of citizenship between the parties. Accordingly,  
24 because diversity jurisdiction exists, the Court can properly consider Defendants’ venue challenge.

25 **II. Venue**

26 **A. Motion to Dismiss Pursuant to Rule 12(b)(3) for Improper Venue**

27 Rule 12(b)(3) allows for dismissal “only when venue is ‘wrong’ or ‘improper’ in the forum  
28 in which it was brought.” *Atl. Marine Const. Co. v. U.S. Dist. Court for W. Dist. of Texas*, 134 S.

1 Ct. 568, 577 (2013). The question of “[w]hether venue is ‘wrong’ or ‘improper’ depends  
2 exclusively on whether the court in which the case was brought satisfies the requirements of  
3 federal venue laws” and “is generally governed by 28 U.S.C. § 1391.” *Id.* at 573. Under Section  
4 1391(b), venue is proper in a judicial district: (1) “in which any defendant resides, if all defendants  
5 are residents of the State in which the district is located”; or (2) “in which a substantial part of the  
6 events or omissions giving rise to the claim occurred, or a substantial part of property that is the  
7 subject of the action is situated”; or (3) “in which any defendant is subject to the court’s personal  
8 jurisdiction with respect to such action,” if no district otherwise exists in which the action can be  
9 brought. 28 U.S.C. § 1391(b). Notably, “[w]hether the parties entered into a contract containing a  
10 forum-selection clause has no bearing on whether a case falls into one of the categories of cases  
11 listed in § 1391(b)”; if the case at issue falls within one of Section 1391(b)’s three categories, then  
12 venue is proper. *Atl. Marine*, 134 S. Ct. at 577, 583. If it does not, “venue is improper, and the  
13 case must be dismissed or transferred.” *Id.* As a result, a case filed in a district that falls within  
14 one of the categories of Section 1391(b) may not be dismissed under Rule 12(b)(3). *Id.*

15 Defendants do not contend that venue is improper in this District for failure to satisfy one  
16 of the three categories enumerated in Section 1391(b). Rather, Defendants move to dismiss for  
17 improper venue only on the grounds that the Franchise Agreement contains a venue provision  
18 providing that “[t]he parties expressly agree to . . . the jurisdiction and venue of the United States  
19 District Court presiding over [BrightStar’s] Home State [of Illinois].” (Dkt. No. 16 at 14.)  
20 Consequently, under the Supreme Court’s decision in *Atlantic Marine*, the Court must deny  
21 Defendants’ motion to dismiss pursuant to Rule 12(b)(3). *See Atl. Marine*, 134 S. Ct. at 577  
22 (stating that “[w]hether venue is ‘wrong’ or ‘improper’ depends exclusively on whether the court  
23 in which the case was brought satisfies the requirements of federal venue laws, and those  
24 provisions say nothing about a forum-selection clause” and that “a forum-selection clause does not  
25 render venue in a court ‘wrong’ or ‘improper’ within the meaning of . . . Rule 12(b)(3)”).

26 **B. Motion to Transfer Venue Pursuant to 28 U.S.C. § 1404(a)**

27 Defendants move in the alternative to have this case transferred to the Northern District of  
28 Illinois pursuant to 28 U.S.C. § 1404(a) on the grounds that the Franchise Agreement’s venue

1 provision mandates that all litigation between Plaintiffs and BrightStar occur in Illinois. (Dkt. No.  
2 16 at 13-14.) However, the venue provision does not apply to Individual Defendants because they  
3 are not parties to the Franchise Agreement.<sup>3</sup> The Court therefore engages in two separate transfer  
4 analyses for BrightStar and Individual Defendants.

5 **1. Transfer of BrightStar**

6 **a. Enforceability of the Venue Provision**

7 Plaintiffs first challenge the enforceability of the Franchise Agreement’s venue provision.  
8 (Dkt. No. 21 at 14-17.) Federal courts apply federal law to determine the enforceability of a  
9 forum-selection clause. *Doe 1 v. AOL LLC*, 552 F.3d 1077, 1083 (9th Cir. 2009). Forum-  
10 selection clauses are “prima facie valid and should be enforced unless enforcement is shown by  
11 the resisting party to be ‘unreasonable’ under the circumstances.” *M/S Bremen v. Zapata Off-  
12 Shore Co.*, 407 U.S. 1, 10 (1972). This exception is construed narrowly. *Argueta v. Banco  
13 Mexicano, S.A.*, 87 F.3d 320, 325 (9th Cir. 1996). “A forum selection clause is unreasonable if (1)  
14 its incorporation into the contract was the result of fraud, undue influence, or overweening  
15 bargaining power; (2) the selected forum is so ‘gravely difficult and inconvenient’ that the  
16 complaining party will ‘for all practical purposes be deprived of its day in court’; or (3)  
17 enforcement of the clause would contravene a strong public policy of the forum in which the suit  
18 is brought.” *Id.* (internal citations omitted). “[T]he party seeking to avoid a forum selection  
19 clause bears a ‘heavy burden’ to establish a ground upon which [the court] will conclude the  
20 clause is unenforceable.” *Doe 1*, 552 F.3d at 1083 (citation omitted).

21 Relying on the factors identified in *Argueta*, Plaintiffs argue that the venue provision is  
22 unenforceable because: (1) “there is a gross disparity in bargaining power” between Plaintiffs and  
23 BrightStar; (2) litigating this action in the Northern District of Illinois would be “unduly  
24 burdensome” for Plaintiffs; and (3) enforcement would violate California’s “strong public policy”  
25 against out-of-state forum-selection clauses in franchise agreements, as purportedly set forth in  
26 California Business & Professions Code § 20040.5. (Dkt. No. 21 at 15-17.)

27 \_\_\_\_\_  
28 <sup>3</sup> At the August 4, 2016 hearing, Defendants’ counsel agreed that the Franchise Agreement, and  
thus its venue provision, applies only to BrightStar, and not to Individual Defendants.



1 their purported burden are private-interest concerns that, under the Supreme Court’s decision in  
 2 *Atlantic Marine*, “may not be considered in analyzing whether a forum selection clause is  
 3 reasonable.” *Cream v. N. Leasing Sys., Inc.*, No. 15-CV-01208-MEJ, 2015 WL 4606463, at \*7  
 4 (N.D. Cal. July 31, 2015) (collecting cases). Further, the argument is unpersuasive on its face  
 5 given that Adam Fraser resides in Georgia; he does not explain why litigating in Illinois is so  
 6 burdensome but California is not.

7 **iii. Contravention of Public Policy**

8 Finally, the third *Argueta* factor provides that a forum-selection clause is unreasonable if  
 9 “enforcement of the clause would contravene a strong public policy of the forum in which the suit  
 10 is brought.” *Argueta*, 87 F.3d at 325. “[A]bsent a total foreclosure of remedy in the transferee  
 11 forum, courts tether their policy analysis to the forum selection clause itself, finding the forum  
 12 selection clause unreasonable only when it contravenes a policy specifically related to venue.”  
 13 *Rowen v. Soundview Commc ’ns, Inc.*, No. 14-CV-05530-WHO, 2015 WL 899294, at \*4 (N.D.  
 14 Cal. Mar. 2, 2015) (citations omitted); *see, e.g., Jones v. GNC Franchising, Inc.*, 211 F.3d 495,  
 15 497-98 (9th Cir. 2000) (finding a forum-selection clause invalid because California law  
 16 specifically provided that California franchisees operating a franchise in California were entitled  
 17 to a California venue for franchise agreement suits); *Hegwer v. Am. Hearing & Assocs.*, No. C 11-  
 18 04942 SBA, 2012 WL 629145, at \*3 (N.D. Cal. Feb. 27, 2012) (finding forum-selection clause  
 19 valid where plaintiff’s unconscionability arguments were directed to other unrelated provisions).

20 Plaintiffs argue that enforcement of the venue provision would violate “a strong California  
 21 public policy” because, according to Plaintiffs, California Business & Professions Code § 20040.5  
 22 prohibits out-of-state forum-selection provisions in franchise agreements. (Dkt. No. 21 at 17.)  
 23 Section 20040.5, however, is inapplicable; the section provides that “[a] provision in a franchise  
 24 agreement restricting venue to a forum outside [California] is void with respect to any claim  
 25 arising under or relating to a franchise agreement involving a franchise business *operating within*  
 26 *[California]*.” Cal. Bus. & Prof. Code § 20040.5 (emphasis added). The franchise at issue here  
 27 does not operate anywhere in California but rather operates exclusively within the Buckhead  
 28 territory in Georgia. (FAC ¶¶ 22-25.) Plaintiffs have not identified any other applicable



1 California public policy supposedly contravened by the venue provision. Thus, no California  
2 public policy is violated by enforcing the venue provision.

3 **b. Application of Venue Provision**

4 “When the parties have agreed to a valid forum-selection clause, a district court should  
5 ordinarily transfer the case to the forum specified in that clause.” *Atl. Marine*, 134 S. Ct. at 581.  
6 The appropriate method for enforcing a valid forum-selection clause is through a motion to  
7 transfer under Section 1404(a). *Id.* at 579. Section 1404(a) provides that, “[f]or the convenience  
8 of parties and witnesses, in the interest of justice, a district court may transfer any civil action to  
9 any other district or division where it might have been brought or to any district or division to  
10 which all parties have consented.” 28 U.S.C. § 1404(a). The “proper application of § 1404(a)  
11 requires that a [valid] forum-selection clause be given controlling weight in all but the most  
12 exceptional cases.” *Atl. Marine*, 134 S. Ct. at 579, 581. In other words, “the interest of justice” is  
13 best served by giving effect to the parties’ bargain. *Id.* at 581. Thus, the party challenging the  
14 clause bears the burden of establishing exceptional circumstances unrelated to the convenience of  
15 the parties that make transfer unwarranted. *Id.*; *see also Rowen*, 2015 WL 899294, at \*3; *Bayol v.*  
16 *Zipcar, Inc.*, No. 14-cv-02483-THE, 2014 WL 4793935, at \*1 (N.D. Cal. Sept. 25, 2014).

17 A forum-selection clause alters the Section 1404 analysis in three ways: “[f]irst, the  
18 plaintiff’s choice of forum merits no weight,” *Atl. Marine*, 134 S. Ct. at 581; second, the court  
19 should not consider arguments about the parties’ private interests, *id.* at 582; and “[t]hird, when a  
20 party bound by a forum-selection clause flouts its contractual obligation and files suit in a different  
21 forum, a § 1404(a) transfer of venue will not carry with it the original venue’s choice-of-law  
22 rules—a factor that in some circumstances may affect public-interest considerations,” *id.* The  
23 underlying rationale for this analysis is that “[w]hen parties have contracted in advance to litigate  
24 disputes in a particular forum, courts should not unnecessarily disrupt the parties’ settled  
25 expectations.” *Id.* at 583.

26 Because Plaintiffs have not carried their heavy burden of establishing exceptional  
27 circumstances to warrant disregarding the parties’ choice of forum, the Court gives “controlling  
28 weight” to that provision, *id.* at 581, and finds that Plaintiffs’ claims against BrightStar should be

1 transferred to the Northern District of Illinois.

2 **2. Transfer of Individual Defendants**

3 Because the venue provision applies only to BrightStar, the Court applies a traditional  
4 Section 1404(a) transfer analysis as to Individual Defendants. Section 1404(a) gives courts  
5 discretion to transfer any civil action to another federal district “[f]or the convenience of parties  
6 and witnesses, in the interest of justice.” 28 U.S.C. § 1404(a). Section 1404(a) requires that (1)  
7 the action “could have been brought” in the transferee district, and (2) the interest of justice and  
8 the convenience of parties and witnesses weigh in favor of transfer. *Commodity Futures Trading*  
9 *Commission v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979). As to the first requirement, Defendants  
10 note—and Plaintiffs do not dispute—that this action could have been brought in the Northern  
11 District of Illinois based on diversity jurisdiction pursuant to 28 U.S.C. § 1332(a). (*See* Dkt. No.  
12 16 at 15.) The Court agrees. Accordingly, the decision to transfer Plaintiffs’ claims against  
13 Individual Defendants turns on Section 1404(a)’s second requirement.

14 **a. The Interest of Justice**

15 The Supreme Court has long recognized that “[t]o permit a situation in which two cases  
16 involving precisely the same issues are simultaneously pending in different District Courts leads to  
17 the wastefulness of time, energy and money that [Section] 1404(a) was designed to prevent.”  
18 *Cont’l Grain Co. v. The FBL-585*, 364 U.S. 19, 26 (1960). For this reason, when deciding  
19 whether to transfer a case under Section 1404(a), “[t]he interest of justice alone can be decisive  
20 even if witness and party convenience weigh against transfer.” *Wood v. Best Buy Co.*, No. 11-  
21 1877 SC, 2011 WL 3740812, at \*1 (N.D. Cal. Aug. 25, 2011); *see Elecs. for Imaging, Inc. v.*  
22 *Tesseron, Ltd.*, No. C 07-05534 CRB, 2008 WL 276567, at \*3 (N.D. Cal. Jan. 29, 2008)  
23 (transferring action based on interest of justice and noting that “[c]onsideration of the interest of  
24 justice, which includes judicial economy, may be determinative to a particular transfer motion,  
25 even if the convenience of the parties and witnesses might call for a different result”).

26 Here, Plaintiffs’ claims against Individual Defendants are identical to their claims against  
27 BrightStar, which as discussed above, the Court is transferring to the Northern District of Illinois.  
28 Declining to also transfer Plaintiffs’ claims against Individual Defendants to that forum would

1 contravene the purpose of Section 1404(a) “to prevent the waste of time, energy, and money and  
2 to protect litigants, witnesses, and the public against unnecessary inconvenience and expense.”  
3 *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964). Thus, it is in the interest of justice for  
4 Plaintiffs’ claims against all parties to be heard by the same court, and transfer will save judicial  
5 economy and prevent the expense and inefficiency associated with duplicative litigation. *See*  
6 *Zurich Ins. Co. v. Celotex Corp.*, No. 88 C 5863, 1988 WL 107392, at \*4 (N.D. Ill. Oct. 11, 1988)  
7 (“[I]t has long been recognized that the avoidance of duplicative litigation is one of the paramount  
8 interests of justice.”).

9 **b. Convenience of the Parties and Witnesses**

10 While the interest of preserving judicial economy alone warrants transfer here, the balance  
11 of Section 1404(a)’s convenience and fairness factors also strongly favor transfer. To determine  
12 convenience and fairness, this District commonly articulates the following relevant factors: (1) the  
13 plaintiff’s choice of forum; (2) the convenience of the parties; (3) the convenience of the  
14 witnesses; (4) ease of access to evidence; (5) familiarity of each forum with applicable law; (6)  
15 feasibility of consolidation of other claims; (7) any local interest in the controversy; and (8) the  
16 relative court congestion and time to trial in each forum. *Martin v. Global Tel\*Link Corp.*, No.  
17 15-cv-00449-YGR, 2015 WL 2124379, at \*2 (N.D. Cal. May 6, 2015); *see also Jones*, 211 F.3d at  
18 498-99. “Weighing of the factors for and against transfer involves subtle considerations and is  
19 best left to the discretion of the trial judge.” *Commodity*, 611 F.2d at 279. Further, “[t]his list is  
20 non-exclusive, and courts may consider other factors, or only those factors which are pertinent to  
21 the case at hand.” *Martin* , 2015 WL 2124379, at \*2; *see Atl. Marine*, 134 S. Ct. at 581 n.6  
22 (noting that additional factors include “all other practical problems that make trial of a case easy,  
23 expeditious and inexpensive”). Individual Defendants, as the moving parties, bear the burden of  
24 showing transfer is appropriate. *Atl. Marine*, 134 S. Ct. at 581.

25 Under the first factor, a plaintiff’s choice of forum is generally entitled to deference, but  
26 the weight of this consideration “is substantially reduced where the plaintiff’s venue choice is not  
27 its residence.” *Fabus Corp. v. Asiana Express Corp.*, No. C-00-3172 PJH, 2001 WL 253185, at  
28 \*1 (N.D. Cal. Mar. 5, 2001). Although Cosmo Fraser is a California resident, Adam Fraser is a

1 resident of Georgia. Thus, Plaintiffs’ choice of forum only weighs slightly against transfer.

2 The second and third factors weigh heavily in favor of transfer. Under these factors, the  
3 Court considers the relative convenience of each forum and finds transfer favorable when the  
4 transferee court will increase the parties’ overall convenience. *See Arete Power, Inc. v. Beacon*  
5 *Power Corp.*, No. C 07-5167 WDB, 2008 WL 508477, at \*6 (N.D. Cal. Feb. 22, 2008) (“The law  
6 requires us to examine the convenience of all the parties, not just the plaintiff—and to try to  
7 identify the forum where the net inconvenience (to all parties) would be least.”); *see also Cung Le*  
8 *v. Zuffa, LLC*, 5:14-cv-05484-EJD, 2015 WL 3488769, at \*6 (N.D. Cal. June 2, 2015) (finding  
9 convenience factors “weigh[] strongly in favor of the transfer [where] this district is not  
10 particularly convenient for a majority of those involved”). The *only* party not inconvenienced by  
11 Plaintiffs’ forum choice is Cosmo Fraser.<sup>5</sup> Adam Fraser’s home in Georgia is approximately  
12 2,500 miles from this District, as opposed to approximately 800 miles from the Northern District  
13 of Illinois. And Individual Defendants lack any physical presence in California—they live in  
14 Illinois and Ohio and conduct a substantial amount of their work near BrightStar’s headquarters in  
15 Gurnee, Illinois. (Dkt. No. 16-2 ¶¶ 4, 6; Dkt. No. 16-3 ¶¶ 4, 6; Dkt. No. 16-4 ¶ 17; Dkt. No. 16-5  
16 ¶¶ 4-6.) Further, the vast majority of other witnesses identified in Plaintiffs’ FAC reside in or near  
17 Illinois (*see* FAC ¶ 45(a); Dkt. No. 16-4 ¶ 14); transfer thus benefits these witnesses because they  
18 will avoid the unnecessary inconvenience and expense of traveling to testify in California.

19 None of the remaining factors—ease of access to evidence, each forum’s familiarity with  
20 the applicable law, local interest in the controversy, and the relative court congestion and time to  
21 trial—militate against transfer. First, all of the documentary evidence relating to Plaintiffs’  
22 business communications with Individual Defendants and BrightStar is stored at BrightStar’s  
23 headquarters in the Northern District of Illinois (Dkt. No. 16-4 ¶¶ 19-20), and “[c]osts of litigation  
24 can [ ] be substantially lessened if the venue is in the district in which most of the documentary  
25 evidence is stored.” *Park v. Dole Fresh Vegetables, Inc.*, 964 F. Supp. 2d 1088, 1095 (N.D. Cal.  
26 2013). Second, even if California law applies to Plaintiffs’ claims upon transfer, “there is nothing

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27  
28 <sup>5</sup> In his July 1, 2016 declaration, Cosmo Fraser stated that he no longer lives in this District, and now lives in Placer County (which is in the Eastern District of California). (Dkt. No. 21-1 ¶ 2.)

1 to indicate that the [Northern District of Illinois] cannot adequately apply California law,” and  
2 thus this factor is neutral.<sup>6</sup> *Moretti v. Hertz Corp.*, No. C 13-02972 JSW, 2014 WL 1410432, at \*6  
3 (N.D. Cal. Apr. 11, 2014). Third, the feasibility of consolidation strongly favors transfer, as  
4 Plaintiffs’ claims against Individual Defendants are identical to, and were brought together with,  
5 their claims against BrightStar, which will be transferred to Illinois. Fourth, the local interest  
6 factor is neutral, as both California and Illinois have an interest in resolving the disputes of its  
7 residents. Finally, the parties did not provide any evidence as to relative congestion or time to trial  
8 in each forum, so this factor is neutral.

9 In sum, taking all of the relevant factors into consideration, the Court concludes that  
10 Individual Defendants have shown that transfer to the Northern District of Illinois is warranted.  
11 Transferring the entire action will efficiently utilize judicial resources and promote consistency.

12 **III. Personal Jurisdiction over Individual Defendants**

13 Because this action is being transferred, the Court denies without prejudice Individual  
14 Defendants’ motions to dismiss for lack of personal jurisdiction pursuant to Rule 12(b)(2) and for  
15 insufficient service of process pursuant to Rule 12(b)(5).

16 **CONCLUSION**

17 For the reasons stated above, Defendants’ motion to dismiss pursuant to Rule 12(b)(3) is  
18 DENIED, and Defendants’ motion in the alternative to transfer venue pursuant to Section 1404(a)  
19 is GRANTED. Accordingly, this action is TRANSFERRED to the United States District Court  
20 for the Northern District of Illinois. Further, the Court DENIES WITHOUT PREJUDICE  
21 Individual Defendants’ motions to dismiss pursuant to Rules 12(b)(2) and 12(b)(5).

22 **IT IS SO ORDERED.**

23 Dated: August 15, 2016

24  
25   
26 JACQUELINE SCOTT CORLEY  
27 United States Magistrate Judge

28 <sup>6</sup> In light of the Illinois choice-of-law provision as to BrightStar, it is unclear that California law will even apply to Plaintiffs’ claims against Individual Defendants.